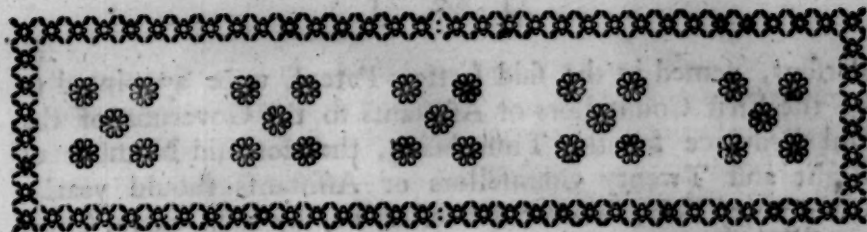




Waterston fund



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B I L L

FOR

The better regulating the Government of the
Province of the *Massachusetts Bay*, in *North*
America.

Note.—The Figures in the Margin denote the Number of the Folios in the written Copy.

WHEREAS by Letters Patent under the Great Seal of *England*, made in the Third Year of the Reign of their late Majesties King *William* and Queen *Mary*, for uniting, erecting, and incorporating, the several Colonies, Territories, and Tracts of Land therein mentioned, into One real Province, by the Name of their Majesties Province of the *Massachusetts Bay*, in *New England*, whereby it was amongst other Things ordained and established, That the Governor of the said Province should from thenceforth be appointed and commissioned by their Majesties, their Heirs and Successors, it was however granted and ordained, That from the Expiration of the Term, for, and during which the Eight and Twenty

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Persons,

Persons, named in the said Letters Patent, were appointed to be the First Counsellors or Assistants to the Governor of the said Province for the Time being, the aforesaid Number of Eight and Twenty Counsellors or Assistants should yearly, Once every Year, for ever thereafter, be, by the General Court or Assembly, newly chosen :

2 And whereas the said Method of electing such Counsellors or Assistants, to be vested with the several Powers, Authorities, and Privileges therein mentioned, although conformable to the Practice, theretofore used, in such of the Colonies thereby united, in which the Appointment of the respective Governors had been vested in the General Courts or Assemblies of the said Colonies, hath, by repeated Experience, been found to be extremely ill adapted to the Plan of Government established in the Province of the *Massachusetts Bay*, by the said Letters Patent hereinbefore mentioned, and hath been so far from contributing to the Attainment of the good Ends and Purposes thereby intended, and to the promoting of the internal Welfare, Peace, and good Government, or to the Maintenance of that just Subordination to, and Conformity with, the Laws of *Great Britain*, that the Manner of exercising the Powers, Authorities, and Privileges, aforesaid, by the Persons so annually elected, hath for some Time past been such as had the most manifest Tendency to obstruct, and in great Measure defeat the Execution of the Laws, to weaken the Attachment of His Majesty's well-disposed Subjects, in the said Province, to His Majesty's Government, and to encourage the ill-disposed among them to proceed even to Acts of direct Resistance to, and Defiance of, His Majesty's Authority; and it hath accordingly happened, that an open Resistance to the Execution of the Laws hath actually taken place in the Town of *Boston* and the Neighbourhood thereof, within the said Province :

And whereas it is, under these Circumstances, become absolutely necessary, in order to the Preservation of the Peace and good Order of the said Province, the Protection of His Majesty's well-disposed Subjects therein resident, the Continuance of the mutual Benefits arising from the Commerce and Correspondence between this Kingdom and the said Province, and the maintaining of the just Dependence of the said Province upon the Crown and Parliament of *Great Britain*, that the said Method of annually electing the

the Counsellors or Assistants of the said Province should no longer be suffered to continue, but that the Appointment of the said Counsellors or Assistants should henceforth be put upon the like Footing as is established in such other of His Majesty's Colonies or Plantations in *America*, the Governors whereof are appointed by His Majesty's Commission under the Great Seal of *Great Britain*: 3

Be it therefore Enacted, by the KING's most Excellent MAJESTY, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the so much of the Charter granted by their Majesties King *William* and Queen *Mary*, to the Inhabitants of the said Province of the *Massachusetts Bay*, in *New England*, and all and every Clause, Matter, and Thing, therein contained, which relates to the Time and Manner of electing the Assistants, or Counsellors, for the said Province, and all Elections and Appointments of such Counsellors and Assistants made in pursuance thereof, shall

and that from and after the said

the Council or Court of Assistants of the said Province for the Time being, shall be composed of such of the Inhabitants or Proprietors of Lands within the same, as shall be thereunto nominated and appointed by His Majesty, his Heirs and Successors, by Warrant under his or their Signet or Sign Manual, and with the Advice of the Privy Council, agreeable to the Practice now used in respect to the Appointment of Counsellors in such of His Majesty's other Colonies, in *America*, the Governors whereof are appointed by Commission under the Great Seal of *Great Britain*: Provided that the Number of the said Assistants or Counsellors shall not at any One Time exceed 4 nor be less than

And it is hereby further Enacted, That the said Assistants or Counsellors so to be appointed as aforesaid, shall hold their Offices respectively, for and during the Pleasure of His Majesty, his Heirs or Successors, and shall have and enjoy all the Powers, Privileges, and Immunities, at present held, exercised, and enjoyed by the Assistants or Counsellors of the said Province, constituted and elected from Time to Time, under the said Charter, except as hereinafter excepted; and shall also, upon their Admission into the said Council, and 5 before

before they enter upon the Execution of their Offices, respectively take the Oaths, and make, repeat, and subscribe, the Declarations required, as well by the said Charter as by any Law or Laws of the said Province now in force, to be taken by the Assistants or Counsellors, which have been so elected and constituted as aforesaid.

And be it further Enacted by the Authority aforesaid, That from and after the

- it shall and may be lawful for His Majesty's Governor, for the Time being, of the said Province, or, in his Absence, for the Lieutenant Governor, to nominate and appoint, under the Seal of the Province, from Time to Time, the Judges of the inferior Courts of Common Pleas, Commissioners of Oyer and Terminer, the Attorney General, Sheriffs, Provofts Marshals, Justices of the Peace, and other Officers to the Council or Courts of Justice belonging, and to remove the same without the Consent of the Council; and that all Judges of the inferior Courts of
- 6 Common Pleas, Commissioners of Oyer and Terminer, the Attorney General, Sheriffs, Provofts Marshals, Justices, and other Officers so appointed by the Governor, or, in his Absence, by the Lieutenant Governor alone, and shall and may have, hold, and exercise, their said Offices, Powers, and Authorities as fully and completely, to all Intents and Purposes, as any Judges of the inferior Courts of Common Pleas, Commissioners of Oyer and Terminer, Attorney General, Sheriffs, Provofts Marshals, or other Officers, have or might have done heretofore under the said Letters Patent, in the Third Year of the Reign of their late Majesties King *William* and Queen *Mary*, any Law, Statute, or Usage, to the contrary notwithstanding.

Provided always, and be it Enacted, That nothing herein contained shall extend, or be construed to extend to annul or make void the Commission granted before the

- 7 to any Judges of the inferior Courts of Common Pleas, Commissioners of Oyer and Terminer, the Attorney General, Sheriffs, Provofts Marshals, Justices of the Peace, or other Officers; but that they may hold and exercise the same, as if this Act had never been made, until the same shall be determined by Death, Removal by the Governor, or other Avoidance, as the Case may happen.

And

And be it further Enacted by the Authority aforesaid, That upon every Vacancy of the Offices of Chief Justice and Judges of the Superior Court of the said Province, from and after the

the Governor for the Time being, or in his Absence the Lieutenant Governor, without the Consent of the Council, shall have full Power and Authority to nominate and appoint the Persons to succeed to the said Offices, who shall hold their Commissions during the Pleasure of His Majesty, his Heirs and Successors; and that neither the Chief Justice and Judges appointed before the said nor those who shall hereafter be appointed pursuant to this Act, shall be removed, unless by the Order of His Majesty, his Heirs or Successors, under his or their Sign Manual. 8

And be it further Enacted by the Authority aforesaid, That the Governor, Lieutenant Governor, Chief Justice, the Judges of the Superior Court, and the Secretary of the said Province, for the Time being, shall be, and they are hereby appointed, during their Continuance in their respective Offices, Justices of the Peace in and for every County of the said Province, and shall and may have, hold, and enjoy, all the Powers and Authorities given to the Justices of the Peace by virtue of their Commission, or by any Act of the General Court of the said Province.

And whereas, by an Act of the General Court of the said Province, made in the Fourth Year of the Reign of their late Majesties King *William* and Queen *Mary*, intituled, "An Act for regulating of Townships, Choice of Town Officers, and setting forth their Power," the Freeholders and Inhabitants of the several Townships, rateable at Twenty Pounds Estate, are authorized to assemble together, in the Month of *March* in every Year, upon Notice given by the Constable, or such other as the Select Men of the Town shall appoint, for the Choice of Select Men, Constables, and other Officers; and the Freeholders and Inhabitants are also impowered to make and agree upon such necessary Rules, Orders, and Bye-laws, for the directing, managing, and ordering, the prudential Affairs, and to annex Penalties for the Non-observance of the same, not exceeding Twenty Shillings for One Offence; provided they be not repugnant to the General Laws of the said Province: 9

And whereas a great Abuse has been made of the Power of calling

calling such Meetings, and the Inhabitants have, contrary to the Design of their Institution, been misled to treat upon Matters of the most general Concern, and to pass many dangerous and unwarrantable Resolves; ~~for~~ Remedy whereof,
 10 **Be it Enacted**, That from and after the

no Town Meeting shall be called by the Select Men, or at the Request of any Number of Freeholders, without the Leave of the Governor in Writing, expressing the special Business of the said Meeting, first had and obtained, except the Annual Meeting, in the Month of *March*, for the Choice of Select Men, Constables, and other Officers; and that no other Matter shall be treated of at such Meeting, except the Election of their aforesaid Officers, nor at any other Meeting, except the Business expressed in the Leave given by the Governor.

And whereas, in pursuance of an Act of Assembly of the said Province, made in the Seventh Year of the Reign of King *William* the Third, and Three other Acts of Assembly, made in the Eleventh Year of the same Reign, Jurors, as well Grand as Petty, have been usually summoned and returned by the Constables of the several Towns, by virtue of
 11 Writs or Warrants directed to them, by the Clerks of the several Courts, requiring them to assemble the Inhabitants of the said Towns, to chuse fit Persons to serve as Jurors for such Towns, and to summon and return such Persons so chosen; which Practice of chusing Jurors, and returning them, without the Intervention of the Sheriff, has been found to be detrimental to the Administration of Justice; **Be it therefore Enacted** by the Authority aforesaid, That from and after the

next ensuing, so much of the said Acts of Assembly, and of all other Laws now in force, within the said Province, as directs the Returns of Juries to be made by the Constables, by an Election of the Inhabitants of the several Towns, shall
 and all Jurors, as well Grand as Petty, shall be returned by the Sheriffs of the several Counties, and no otherwise; and the Justices of the Superior Court of the said Province, at a convenient Time before the Sitting of the Superior Court in every
 12 County, and the Justices of the Peace for every County in the said Province, at a convenient Time before the Sitting of the Quarter Session of such County, shall issue their Precepts or Warrants to the Sheriff of such County, for such several Courts
 respectively

respectively to summon, out of the Freeholders and Inhabitants of such County qualified to serve upon Juries, such a Number of good and lawful Men as such Precept or Warrant shall direct, to serve upon the Grand Jury at such respective Court; and such Persons so summoned and returned by the said Sheriff, or such of them as shall appear, shall be impannelled and sworn the Grand Inquest for the Body of the County, and shall continue as such during the Sitting of such respective Court, and until they shall be dismissed by the same; and in all Indictments, Informations, Actions, and Causes, depending before the Superior Court, or any Court of Quarter Session, or Court of Common Pleas, in the said Province, which shall be at Issue, and ordered for Trial, the Juries shall be summoned, impannelled, and returned, by the Sheriff of the County, out of the Freeholders and Inhabitants of the said County qualified to serve upon Juries, and shall be chosen and arrayed in such Manner and Form, and by and with such Regulations and Restrictions, as is directed and ordered in and by an Act of Parliament, made in the Seventh and Eighth Years of the Reign of his late Majesty King *William* the Third, intituled, "An Act for the Ease of Jurors, and better regulating of Juries;" and One other Act, made in the Eighth and Ninth Years of the same Reign, intituled, "An Act to enable the Returns of Juries as formerly, until the First Day of *November*, One thousand Six hundred and Ninety-seven;" and One other Act of Parliament, made in the Third Year of the Reign of his late Majesty King *George* the Second, intituled, "An Act for the better Regulation of Juries;" and One other Act, made in the Twenty-fourth Year of the same Reign, intituled, "An Act for the better Regulation of Trials by Jury, and for enlarging the Time for Trials by *Nisi Prius*, in the County of *Middlesex*." 13

And be it further Enacted by the Authority aforesaid, That Lists of the Freeholders and Inhabitants of the several Towns, qualified to serve upon Juries, shall be returned to, and recorded at, the Quarter Sessions for the several Counties, and shall be delivered to the several Sheriffs in Manner and Form as is directed by the said Acts of Parliament, or any of them; and until such Lists of such Freeholders and Inhabitants shall be delivered as aforesaid, the Sheriff of any County shall and may summon and return fit Persons to serve upon Juries as aforesaid, out of the Body of the Freeholders and Inhabitants 14

of the County, qualified to serve upon Juries, according to his Judgment and Discretion; and whenever the Judges of the Superior Court shall Award a Special Jury to be struck (which they are hereby authorized and impowered to do in such Manner as Special Juries have been usually struck in the Courts at *Westminster* at Trials at Bar) and if the Sheriff of the County in which such Jury shall be awarded, shall not have received Lists of the Freeholders and Inhabitants qualified to serve upon Juries as hereinbefore ordered and directed, such Sheriff shall attend the proper Office of the said Court, with a List of the principal Freeholders and Inhabitants of the said County qualified to serve upon Juries, and the said Special Jury shall be struck out of the said List; and it shall and may be lawful for the Justices of the said Superior Court, and they are hereby authorized and impowered, upon the Motion of either of the Parties, in any Cause or Action which shall be brought to issue, to order the said Cause or Action to be tried in any County, other than the County in which the said Cause or Action shall have been brought or laid, by a Jury of such other County, as they shall judge fit and proper, any Act of Assembly or Provincial Law to the contrary notwithstanding.

And be it further Enacted by the Authority aforesaid, That all Clerks of Courts, Sheriffs, Constables, and other Persons within the said Province, to whom the ordering, making, delivering, or recording, the Lists of the Freeholders and Inhabitants qualified to serve upon Juries as aforesaid, shall belong or appertain, according to the true Intent and Meaning of this present Act, and the said Acts hereby referred to, who shall be guilty of any wilful Neglect, Default, or Mifeazance, in the carrying into Execution this Act, according to its true Intent and Meaning, shall incur and suffer such Fines and Penalties as are severally mentioned in the said Acts of Parliament hereby referred to; and all Persons who, being duly qualified as aforesaid, shall be duly summoned to serve upon Juries in Manner aforesaid, and shall not attend such Service, shall incur and suffer such Fines and Penalties as, by the Laws of the said Province, Jurors making Default are now subject to.

And be it further Enacted by the Authority aforesaid, That if any Action shall be brought against any Sheriff, for what he shall do in Execution, or by virtue of this Act, he may plead the general Issue, and give the special Matter in Evidence; and if a Verdict shall be found for him, he shall recover Costs.

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The better regulating the Government of the Province of the Massachusetts Bay, in North America.

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